

ORIGINAL

Em
4/25/01IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

RICHARD C. WOJEWODZKI,

Plaintiff

v.

CONSOLIDATED FREIGHTWAYS,
INC.,

Defendant

CIVIL ACTION NO. 1:CV 01-285

JUDGE SYLVIA H. RAMBO

mag judge
Amyer

JURY TRIAL DEMANDED

FILED
HARRISBURG, PA

APR 24 2001

MARY E. D'ANDREA, CLERK
PER 9/13
DEPUTY CLERK**CONSOLIDATED FREIGHTWAYS CORPORATION'S
MOTION TO DISMISS PURSUANT TO FED. R. CIV. P. 12(b)(6)**

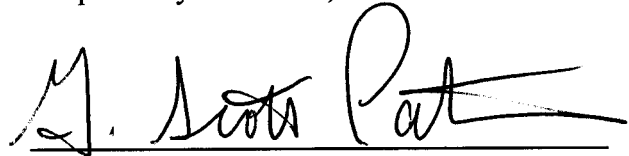
Consolidated Freightways Corporation of Delaware (hereinafter "CF"), by its attorneys, hereby submits this Motion to Dismiss the Complaint pursuant to Fed. R. Civ. P. 12(b)(6). In support of this motion, CF states as follows:

1. On February 14, 2001, Plaintiff commenced this action by filing his Complaint.
2. Plaintiff asserts his claim against CF under the Age Discrimination in Employment Act, 29 U.S.C. § 621 *et seq* ("ADEA") (Count I).
3. Plaintiff, age 56, bases his claim on the assertions that he was demoted because of his age and that he was replaced by a substantially younger person. Compl., at ¶ 13.
4. Plaintiff's replacement was James M. Kot, age 51.
5. CF hereby moves to dismiss Plaintiff's Complaint in its entirety, pursuant to Fed. R. Civ. Pro. 12(b)(6), for failure to state a claim upon which relief may be granted. Plaintiff cannot establish a *prima facie* case, as Mr. Kot, Plaintiff's

replacement, is not substantially younger than Plaintiff, as defined by the Third Circuit Court of Appeals. See Narin v. Lower Merion School District, 206 F.3d 323 (2000).

6. CF sets forth its arguments in support of this motion in their supporting Memorandum of Law which will be filed within the time prescribed by Local Rule 7.5 of the United States District Court for the Middle District of Pennsylvania.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "V. Candiello", written over a horizontal line.

VINCENT CANDIELLO
G. SCOTT PATERNO
One Commerce Square
417 Walnut Street
Harrisburg, PA 17101-1904
717.237.4000

Of Counsel:

MORGAN, LEWIS & BOCKIUS LLP

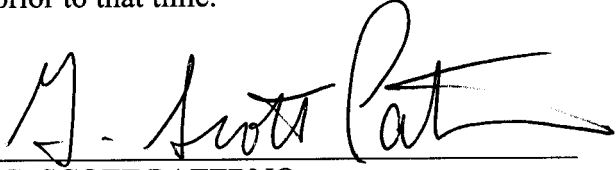
Dated: April 24, 2001

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

RICHARD C. WOJEWODZKI,	:	CIVIL ACTION NO. 1:CV 01-285
	:	
Plaintiff	:	
	:	
v.	:	JUDGE SYLVIA H. RAMBO
	:	
CONSOLIDATED FREIGHTWAYS,	:	
INC.,	:	
	:	
Defendant	:	JURY TRIAL DEMANDED

CERTIFICATE OF NONCONCURRENCE

I, Scott Paterno, hereby certify that on April 24, 2001, I attempted to contact Plaintiff's Counsel in order to secure Plaintiff's concurrence. I left a voice message for Plaintiff's Counsel, advising him that if no response was received prior to 11 AM EDST, I would consider that lack of a response as notice of Plaintiff's nonconcurrence. No response was received prior to that time.


G. SCOTT PATERNO

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Consolidated Freightways Corporation's Motion to Dismiss Plaintiff's Complaint has been served via U.S. Mail, postage prepaid, on this **24th day of April, 2001**, upon the following:

Lawrence L. Markowitz, Esquire
Markowitz & Krevsky, P.C.
208 E. Market Street
P.O. Box 392
York, PA 17405-0392


VINCENT CANDIELLO